CHARITABLE GIVING VEHICLES: UNSUNG HEROES IN THE DEMISE OF THE "STRETCH" IRA

As many tax and estate planning attorneys are aware, the SECURE Act, passed in 2019 requires IRA beneficiaries to withdraw the entire balance of the account within 10 years of the death of the original IRA owner. If the IRA is significant, this could have negative tax consequences for the beneficiary because the distributions from the IRA are taxed to the beneficiary as ordinary income. Prior to the SECURE Act, many IRA owners used a "stretch" IRA strategy, which enabled IRA beneficiaries to stretch out required minimum distributions over the lifespan of the beneficiary. The "stretch" meant smaller distributions and smaller tax liability. The 10-year rule under the SECURE Act makes this strategy mostly irrelevant.

For IRA owners who are philanthropic and reluctant to give money to their beneficiaries that may be diminished by tax liabilities, certain charitable giving vehicles may be a solution: the Testamentary Charitable Remainder Trust ("T-CRUT") and the Testamentary Charitable Gift Annuity ("T-CGA").

1. The T-CRUT: A "Stretch" IRA Alternative

A T-CRUT could be a solution for IRA owners who would normally name a beneficiary that could utilize the "stretch" IRA. Upon the IRA owner's death, the T-CRUT is funded by the IRA account pays out a percentage to named beneficiaries over the course of the T-CRUT. Upon the death of the T-CRUT beneficiary or the expiration of the T-CRUT, the proceeds are distributed to the charity named by the IRA owner.

Benefits:

- Provides a percentage of trust income to named beneficiaries.
- Income from the T-CRUT is spread out (presumably longer than 10 years, depending upon the goals of the IRA owner), thereby minimizing tax consequences to the beneficiary.
- Estate of the IRA owner claims a deduction, depending on the length of the period of distributions from the T-CRUT.

Things to Consider:

- Up-front costs and administration fees make this option more appropriate for IRAs with significant value.
- While the beneficiaries of the "stretch" IRA would have received the entire balance of the IRA account by their death, the remainder of the proceeds in the T-CRUT gets distributed to charity.

2. The T-CGA: A Cost-Effective "Stretch" IRA Alternative

Benefits:

- Provides a fixed dollar amount to a named beneficiary, thereby providing reliable income with no market risk.
- Income is spread out over the beneficiary's lifetime, minimizing tax consequences.

- Up-front costs and administration fees are inexpensive.

Things to Consider:

- The only guidance on this alternative is a non-binding private letter ruling issued by the IRS "concerning the tax treatment of funding a testamentary charitable gift annuity with assets from an IRA."[1]

For philanthropic IRA owners who want to provide income to their children, grandchildren, or other loved ones but are worried about tax liability, a T-CRUT or T-CGA could be a viable solution. When selecting a charity -beneficiary, IRA owners should be sure to select a charity that is experienced with accepting these types of charitable gifts.

[1] *See* I.R.S. Priv. Ltr. Rul. 200230018 (July 26, 2002).